IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4604 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NIRANJANABEN VINODCHANDRA DAVE

Versus

STATE OF GUJARAT

Appearance:

MS MAMTA R VYAS for Petitioner

Mr.Digant P. Joshi for the respondent State.

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 08/05/2000

ORAL JUDGEMENT :

The present petition is filed by the petitioner for the reliefs to the effect that the petitioner be declared as entitled for the benefits of pension scheme and also the gratuity. The petitioner has also prayed for the directions that the authorities shall pay the petitioner arrears from the date of her retirement.

2. The petitioner was initially appointed as Assistant Teacher in PCN High School, Meghraj, where the petitioner worked upto October 1962. Thereafter, the petitioner was appointed as Assistant Teacher at PG Mehta High School, Malpur where she continued upto 3.11.1963. Thereafter, the petitioner was appointed as Assistant Teacher on 13.6.1966. The petitioner retired on her reaching the age of superannuation on 31.5.1996. It is the case of the petitioner that until the petitioner

retired on reaching the age of superannuation, the scheme of pension and gratuity was not introduced for the private primary schools. Therefore, the petitioner is not given pension. It is only in the year 1998 that the petitioner came to know from reliable sources that as per the Court's order, pension scheme is now made applicable to the primary teachers also and therefore, the petitioner made a representation to respondent no.3, District Education Officer, Gandhinagar. It is the case of the petitioner that respondent no.3 asked respondent no.4- school, namely, Sheth Bhikhabhai High School at and post Isanpura Mota, Taluka & District Gandhinagar to send any order, if passed by the Govt. in this regard. It is the case of the petitioner that respondent no.4 school issued certificate to the effect that the petitioner was not a member of the CPF Scheme, but has contributed towards GPF, where the Govt. was not contributing. The petitioner having not received any satisfactory reply from the respondent, had represented before various forums like Lok Darbar, etc. but all in vain. The petitioner having received a letter from respondent no.1, the Secretary, Education Department, whereby the petitioner is denied the benefits of pension/ gratuity to the petitioner, has approached this Court.

3. The petition is filed mainly on the basis that this Court (Coram : S.K. Keshote, J.) had decided Special Civil Application No.3635 of 1982 by an order dated 18.1.1997. While dealing with the mater, the Court has observed as under in para 13 :

"The matter is squarely covered by the decision of the Supreme Court in the case of State of Maharashtra vs. Manubhai Pragji Vashi (supra). The action of the respondent State of not extending the benefit of pension scheme to the teachers of recognised, aided private primary schools, though such benefit has been extended to the teachers of private secondary and higher secondary schools and colleges which are recognised and aided, is patently discriminatory and based on no material. The respondent has not discharged the burden of proof cast on it to sustain the differential treatment meted out to teachers of recognised private primary schools receiving grant in aid. It is patent that likes have been treated unlike without proper justification or reason, and this class of persons have been singled out for hostile discriminatory treatment. Disparity in the service conditions, in not affording the benefit

of pension scheme to the teachers of recognised and aided private primary schools is discriminatory and requires to be set right."

4. In the present case also, Mr.Digant P. Joshi, the learned Asstt. Govt. Pleader for the respondents is not able to point out any distinguishing feature of the present case to show as to how the said judgement of this Court is not applicable to the present case. Hence this petition is allowed. Mr.Joshi for the respondents, however, points out that against the said judgement of the learned Single Judge of this Court, an appeal being Letters Patent Appeal No.788 of 1998 is filed and is pending. That is no ground for not following the judgement of this Court, when no orders are pointed out to have been obtained by the respondents in an appeal filed in 1998.

5. In the result, this Special Civil Application is allowed. The action of the respondent, State of Gujarat of not giving the benefit of pension to the teachers of recognized aided private primary schools is declared ultra vires the Articles 14 and 16 of the Constitution of India. The respondent, State of Gujarat is directed to extend the benefit of pension to the teachers of the recognized aided private primary schools in the State of Gujarat. The petitioner's claim shall be worked out within a reasonable time. However, said working shall not take more than six months from the date of receipt of writ of this Court and thereafter the petitioner shall be given the benefit of pension within next three months.

6. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly with no order costs.

8.5.2000 (Ravi R. Tripathi, J.)
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